

JOHN LOVELADY

IBLA 82-1247

Decided November 16, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 52125 through CA MC 52127.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Where a mining claimant submits a copy of his annual proof of labor to the BLM district office in Susanville, California, on Dec. 31, 1981, he has not complied with 43 CFR 3833.2-1. The instrument was submitted to the district office after the statutory period for such filings had expired. Further, the district office was not the "proper BLM office" in which to file such a document. The proper office is the BLM California State Office in Sacramento, California, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

APPEARANCES: John Lovelady, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John Lovelady appeals the California State Office (CaSO), Bureau of Land Management (BLM), decision of July 21, 1982, which declared the unpatented Keystone, Morin and Morin Lower Claim, and Morin and Morin Upper Claim placer mining claims, CA MC 52125 through CA MC 52127, abandoned and void

because no proof of labor or notice of intention to hold the claims was filed with CaSO on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant states that he had mailed a copy of the proof of labor for 1981 to CaSO in October 1981, after receiving a copy of the recorded proof of labor from the county recorder of Plumas County, California. When he discovered that CaSO has no record of his proof of labor, on December 31, 1981, he took a copy of the proof of labor to the BLM Susanville district office, and requested that it be received and transmitted to CaSO. The document was received by CaSO January 7, 1982.

The record indicates that the claims were located prior to October 21, 1976. Copies of the location notices were timely filed with CaSO in October 1979, as was a proof of labor. The 1980 proof of labor was filed with CaSO December 30, 1980.

[1] Section 314 of FLPMA requires that copy of the notice of location for mining claims located prior to October 21, 1976, be filed the proper office of BLM within 3 years after October 21, 1976. For such claims, evidence of assessment work or a notice of intention to hold the claims also had to be filed in the proper office of BLM within the same time period, and on or before December 30 of each calendar year thereafter. Each instrument filed with BLM also had to be filed for record in the local recording office having jurisdiction; in this case, the recorder for Plumas County, California.

The "proper office of BLM" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). This latter section states that the California State Office in Sacramento is the office having jurisdiction over public lands in the State of California. Thus, under 43 CFR 3833.2-1(a), appellant was required to have the instrument relating to his proof of labor recorded in Plumas County, California, and a copy of the recorded instrument delivered to, received by, and time stamped by CaSO on or before December 30, 1981.

Appellant submitted his proof of labor to the BLM district office in Susanville, rather than to CaSO in Sacramento, as required by the regulations. In fact, the submission to the district office was after the statutory time period for such filing had expired. Accordingly, the instrument may not be regarded as having been "filed" with BLM until actually received and date stamped by CaSO. The instrument was received and date stamped by CaSO January 7, 1982. It is irrelevant that the instrument was tendered to the Susanville district office, as that office is without authority to accept filings for recordation of mining claims under FLPMA as BLM regulations require such filings to be made in the State Office. The need to conduct business at the office having appropriate jurisdiction has long been recognized. Mathews v. Zane, 5 U.S. (7 Wheat. 164) 244 (1822). See also Donald Jardine, 58 IBLA 156 (1981); Gretchen Capital, Ltd., 37 IBLA 392 (1978). ^{1/}

^{1/} Insofar as appellant's purported filing in October 1981, is concerned, we note that appellant has tendered no evidence that the proof of labor was

The responsibility is on the mining claimant to file the required information timely in the proper office of BLM. This Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Administrative Judge
Alternate Member

fn. 1 (continued)

ever received by Ca₃O, and thus has not overcome the presumption of regularity which applies in these cases. See, e.g., Bernard S. Storper, 60 IBLA 67 (1981).

